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Administration of justice at the United Nations

Letter dated 26 October 2016 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 26 October 2016 from the Chair of the Sixth Committee, Danny Danon, on the administration of justice at the United Nations (see annex).

(Signed) Peter **Thomson**

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Annex

I have the honour to write to you with regard to agenda item 145, Administration of justice at the United Nations.

As you are aware, at its 2nd plenary meeting, on 16 September 2016, the General Assembly, upon the recommendation of the General Committee, referred the agenda item to both the Fifth and Sixth Committees. In paragraph 43 of its resolution 70/112, the Assembly invited the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.

During the present session, the Sixth Committee considered the item at its 16th meeting, on 14 October 2016, as well as in informal consultations held on 12, 18 and 21 October. The Sixth Committee considered the legal aspects of the report of the Secretary-General on the administration of justice at the United Nations (A/71/164), the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157) and the report of the Internal Justice Council (A/71/158), which included, in annexes, the memorandum submitted by the judges of the United Nations Dispute Tribunal on systemic issues and the comments submitted by the judges of the United Nations Appeals Tribunal. The Committee also had before it the note by the Secretary-General transmitting the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations (A/71/62/Rev.1) and the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel and revised estimates relating to the programme budget for the biennium 2016-2017 (A/71/163).

During the informal consultations held on 12 October, the Chair of the Internal Justice Council and the Executive Director of the Office of Administration of Justice made presentations and remained available, along with representatives of other units of the Secretariat, to provide answers and clarifications to delegations, which were very grateful for the opportunity.

I should draw your attention to a number of specific issues related to the legal aspects of those reports, as discussed in the Sixth Committee.

Delegations expressed their appreciation to the Secretary-General for his comprehensive report submitted pursuant to resolution 70/112, as well as the report on the activities of the Office of the United Nations Ombudsman and Mediation Services. Delegations took note of: (a) the data provided with respect to cases within the formal internal justice system and the observations made with respect to the data and emerging trends; (b) the information provided with respect to disputes involving non-staff personnel; (c) the information provided with respect to the outcome of matters involving the accountability of managers whose decisions have been established to be grossly negligent, according to the applicable Staff Regulations and Rules of the United Nations, and which have led to litigation and subsequent financial loss; (d) the information provided with respect to the effectiveness of the Management Evaluation Unit of the Department of Management; (e) the information provided with respect to the voluntary supplemental funding mechanism for additional resources for the Office of Staff Legal Assistance of the Office of Administration of Justice; (f) the information provided with respect to the implementation of the amendment to article 11, paragraph 3, of the statute of the Dispute Tribunal and to article 7, paragraph 5, of the statute of the Appeals Tribunal, including with respect to the administrative implications, any implications for the timely disposal of those cases, the ultimate disposition of appeals of orders, if any, and any costs saved by reason of stays pending such appeals; (g) the publication of the statutes of the Tribunals as amended since their initial adoption by the Assembly; (h) the report on progress made in the implementation of recommendations to address systemic and cross-cutting issues contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services; and (i) the promulgation of the revised terms of reference and guidelines for the Office of the United Nations Ombudsman and Mediation Services.

Delegations took note with appreciation of the report of the Internal Justice Council. They also took note with appreciation of the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations and its findings that the system has made a good start and is an improvement over the previous system, and that the aims and objectives of the system have been achieved to a very great extent. However, delegations also recognized that there was still room for improvement. Delegations also took note with appreciation of the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel and revised estimates relating to the programme budget for the biennium 2016-2017.

Independence of the judiciary

While emphasizing the need for effective cooperation and coordination between the Fifth Committee and the Sixth Committee, and while noting the report of the Advisory Committee on Administrative and Budgetary Questions on this item (A/71/436), the Sixth Committee once more underlined that, under its resolution 61/261, the General Assembly had decided that the new system of administration of justice should be independent, transparent, professionalized, adequately resourced and decentralized, consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. Delegations were therefore of the view that, when considering the various proposals set out in the above-mentioned reports that may have financial implications, the Assembly should take duly into account paragraph 4 of its resolution 61/261.

Some delegations supported the strengthening of the Management Evaluation Unit, the Office of Staff Legal Assistance and the Registries of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, and stressed that adequate resources were needed to ensure the independence and effectiveness of the formal and informal systems. Other delegations were of the view that recommendations with financial implications should be discussed in the Fifth Committee. Delegations took note of the observations of the Chair of the Internal Justice Council during the briefing, who stated that an underresourced system could potentially generate additional costs owing to procedural inefficiencies.

Knowledge of the system and outreach activities

Delegations welcomed the efforts reported by the different parts of the system of administration of justice to inform staff about available sources of legal and other advice and about the possibilities of securing legal representation in the system. The Sixth Committee, in line with recommendation 9 of the report of the Interim Independent Assessment Panel (A/71/62/Rev.1, paras. 198 and 199), also welcomed the information provided by the Secretary-General on outreach activities and emphasized the important role of those activities in ensuring universal accessibility to the system of administration of justice at the United Nations. Delegations urged the Secretariat to strengthen and increase outreach activities with a view to providing information on the role and functioning of the various parts of the system and the possibilities it offered to address work-related complaints, including to non-staff personnel, paying particular attention to field missions and offices.

Jurisprudential guides

As previously noted by the Sixth Committee (see A/C.5/69/10, annex), full and accurate availability of and easy access to the jurisprudence of the Tribunals has an important legal dimension since it allows staff and management, as well as anyone acting as a legal representative, to inform themselves about the latest developments of the jurisprudence, to establish precedents that could guide the assessment of other cases and to better understand relevant rules and regulations as applied by the Tribunals. In this regard, the Sixth Committee noted that the Interim Independent Assessment Panel recommended that the Office of Administration of Justice further improve the search engine of the Tribunals' jurisprudence (A/71/62/Rev.1, recommendation 12 and para. 199) and that the Organization enhance the provision of jurisprudential guides (ibid., recommendation 22 and para. 236). The Committee further welcomed the updated search engine, which had been available since August 2016. The Committee highlighted the value of the preparation of summaries and keywords for each judgment of the Tribunals in order to assist all staff in understanding the Tribunals' jurisprudence.

Informal system

The Sixth Committee emphasized that the informal dispute settlement was a crucial component of the internal system of administration of justice and called for better incentives to resort to informal conflict resolution. Delegations commended the activities of the Office of the United Nations Ombudsman and Mediation Services and noted the increase in cases that the Office of the Ombudsman had opened in 2015. It also recognized that half of the mediation cases were self-referrals, which signalled a heightened awareness of the benefits of mediation as a conflict resolution mechanism. The Committee encouraged all parties to a work-related dispute to make every effort to settle it early on in the informal system, without prejudice to the right of each staff member to submit a complaint for review in the formal system. The Committee also welcomed recommendations 33 to 35 of the report of the Interim Independent Assessment Panel (ibid., paras. 288-297) and the comments of the Secretary-General (A/71/163, paras. 88-98) regarding mediation processes, mediation settlement and training in conflict management.

Code of conduct for legal representatives and litigants in person

The Sixth Committee welcomed the proposal of the Secretary-General for a single code of conduct for all legal representatives, as requested by the General Assembly in its resolution 70/112 (see A/71/164, annex IV) and recommended approving the draft with amendments. Delegations stated that the code of conduct should be considered a living document, which should be improved or updated in the light of lessons learned. The amended draft code of conduct can be found in the appendix below.

Amendments to the statutes of the Dispute Tribunal and the Appeals Tribunal

Having reviewed the proposals of the Secretary-General (see A/71/163, para. 158 (a) and (j)), the Committee recommended approving the following amendments to the relevant articles of the statute of the United Nations Dispute Tribunal:

> Amend article 4, paragraph 3 (a), of the statute of the Dispute Tribunal to add the words "and impartial" and add an article 4, paragraph 3 (c), reading "Be fluent, both orally and in writing, in English or French".
>
> Amend article 4, paragraph 7, of the statute of the Dispute Tribunal to add the words "who shall have the authority, inter alia, to monitor the timely delivery of judgments".

The Committee also recommended amending the statute of the United Nations Appeals Tribunal to make an equivalent amendment to that proposed by the Secretary-General for article 4, paragraph 7, of the statute of the Dispute Tribunal, as follows:

> Add a new article 4, paragraph 4, to the statute of the United Nations Appeals Tribunal, reading: "The President shall have the authority, inter alia, to monitor the timely delivery of judgments."

Addition of three permanent full-time judges to the Dispute Tribunal

The Sixth Committee noted that, in his report on the findings and recommendations of the Interim Independent Assessment Panel (A/71/163, paras. 126-129), the Secretary-General recommended the addition of three permanent full-time judges to the Dispute Tribunal and provided his reasons therefor. This measure was also long advocated by the Internal Justice Council (see A/70/188, paras. 70 and 71; A/70/190, para. 31; A/69/205, paras. 152-155; and A/67/98, para. 22), the judges of the Dispute and Appeals Tribunals (see A/68/306, annex II, paras. 6 and 7; see also A/67/538, annex, enclosure I, paras. 8 and 9) and the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 47 and paras. 367-370). The Sixth Committee recalled that it had previously emphasized the need to find a long-term solution to the question of the composition of the Tribunal that would ensure the sustained efficiency of the performance of the formal system (see letters from the Chair of the Sixth Committee to the President of the General Assembly in 2012 (A/C.5/67/9, annex), 2013 (A/C.5/68/11, annex) and 2014 (A/C.5/69/10, annex)). The Sixth Committee also recalled that in previous years it had acknowledged that the extension of the positions of three ad litem

judges was a necessary temporary measure aimed at ensuring the continued delivery of justice (see the letters from the Chair of the Sixth Committee to the President of the Assembly cited above and A/C.5/70/9, of 2015). The Committee encouraged the Assembly to take the aforementioned views into consideration.

Receivability before the Dispute Tribunal

Regarding recommendation 44 of the Interim Independent Assessment Panel report (A/71/62/Rev.1, paras. 344 and 345) that the Tribunals adopt and apply a mechanism of early resolution of receivability issues, delegations reiterated the importance of judicial economy in the proceedings. The Sixth Committee supported the view of the Secretary-General (A/71/163, paras. 117 and 118) that no new procedural device for that purpose was necessary, as the Dispute Tribunal already had authority to consider motions on receivability as an initial matter, separately from the merits of a case. Furthermore, the Sixth Committee shared the view of the Secretary-General (ibid., para. 119) that Dispute Tribunal decisions on receivability should remain appealable.

Remuneration for interlocutory motions

Some delegations noted the increase in the number of appeals received by the Appeals Tribunal over the past year. The Sixth Committee agreed with the view expressed by the Interim Independent Assessment Panel (A/71/62/Rev.1, para. 377) that the Tribunal should deal with urgent motions *in limine* as preliminary issues that would provide early indicators to the parties whether to proceed or settle, thereby reducing the number of appeals. In this regard, delegations also supported the recommendation of the Internal Justice Council to extend time limits for filing an appeal to permit settlement discussions and acknowledged that the issue was currently under review.

Delegations agreed with the Secretary-General's emphasis on the importance of interlocutory motions before the Appeals Tribunal and noted that the question of compensation for the work on such motions should be given careful consideration in the Fifth Committee.

Complaints by non-staff personnel

The Sixth Committee expressed gratitude for the information provided by the Secretary-General, at the request of the General Assembly, in his report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157) regarding the number and nature of cases brought forward by non-staff personnel. Delegations recalled that the Committee had repeatedly highlighted that the United Nations should ensure that effective remedies were available to all categories of personnel, including non-staff personnel, and had recommended that the question be addressed in the envisaged interim assessment. The Committee notes that the Interim Independent Assessment Panel has made a recommendation in that regard.

Delegations noted the views expressed by the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 23 and paras. 233-243) and the Secretary-General (A/71/163, paras. 58-62), as well as the three options for a remedy system

for non-staff personnel elaborated by the Internal Justice Council (A/71/158, paras. 142-153 and annex I, para. 13).

Delegations received information presented orally by representatives of the Secretariat, in particular with regard to reports of the Secretary-General on the administration of justice at the United Nations (A/66/275, including annex II, "Proposal for recourse mechanisms for non-staff personnel", and A/67/265, including annex IV, "Expedited arbitration procedures for consultants and individual contractors" and annex VI, "Access to the system of administration of justice for non-staff personnel not covered under the dispute resolution mechanism and other measures available to them for addressing disputes"), as well as information from the Internal Justice Council.

With a view to updating available information in this regard and to assessing how effective remedies are provided to non-staff personnel, delegations requested the Secretary-General to prepare, with a view to informing the discussion at the seventy-second session of the General Assembly, a compilation setting out the categories of non-staff personnel and the remedies available to them, in tabular form, and providing figures for the number of disputes brought by non-staff personnel and the types of remedies used since 2009, to the extent available, and to be used going forward. Such information should include:

(a) The number of disputes brought before the system of justice and/or any other measures for addressing disputes available to each category of non-staff personnel and an indication of how such disputes were resolved;

(b) The number of disputes brought before national jurisdictions and an indication of how such disputes were resolved;

(c) The practical measures that have been taken so far by the United Nations to ensure the proper implementation of the system and to avoid gaps, as well as any other good practices, including in such matters as the translation of documents into local languages, the ability to be heard, access to arbitration, information given to non-staff personnel on available remedies and so on. It is suggested that the Secretariat prepare a questionnaire to that effect;

(d) Information on how United Nations specialized agencies and related bodies provide remedies to non-staff personnel.

Protection against retaliation

Delegations noted the different views of the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 24 and paras. 243-246) and the Secretary-General (A/[illegible]/63, paras. 63-66) with regard to the protection of staff members from retaliation for appearing as witnesses or for lodging an appeal. In this regard, the Sixth Committee considered that protection against retaliation should be strengthened and requested the Secretary-General to report at the next session of the General Assembly on ways to strengthen implementation of the existing system.

Investigations

Taking note of the views of the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 58, and, in particular, paras. 93 and 396-399) and

the response of the Secretary-General in this regard (A/71/163, paras. 146-150), the Sixth Committee recommended that the Secretary-General be requested to provide further information on the improvement of investigations into misconduct and harassment and on the training provided by the Office of Internal Oversight Services to staff members on conducting peer-based investigations.

Closing remarks

The Sixth Committee recommended that the General Assembly include the item entitled "Administration of justice at the United Nations" in the provisional agenda of its seventy-second session.

It would be appreciated if the present letter were brought to the attention of the Chair of the Fifth Committee and be circulated as a document of the General Assembly under agenda item 145, "Administration of justice at the United Nations".

(*Signed*) Danny **Danon**
Chair of the Sixth Committee
at the seventy-first session
of the General Assembly

Appendix

Amended draft code of conduct for legal representatives and litigants in person*

Code of conduct for legal representatives and litigants in person

Preamble

Whereas the General Assembly, in its resolution 69/203 of 18 December 2014, stressed the need to ensure that all individuals acting as legal representatives appearing before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal are subject to the same standards of professional conduct, and requested the submission of a single code of conduct for all legal representatives, without prejudice to other lines of disciplinary authority,

Whereas appropriate standards should also be adopted for litigants in person,

The following provisions are adopted:

Article 1
Definitions

In the present Code, the following terms shall mean:

Code: the present Code of Conduct for Legal Representatives and Litigants in Person acting in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal, as approved by the General Assembly;

Legal representative: an individual who acts on behalf of a party ~~or who represents himself or herself~~ in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal;

Litigant in person: an individual who represents himself or herself in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal;

Party: the applicant or the respondent in proceedings before the United Nations Dispute Tribunal or the appellant or the respondent in proceedings before the United Nations Appeals Tribunal;

Statutes: the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as adopted by the General Assembly in its resolution 63/253, as amended;

Rules of procedure: the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as approved by the General Assembly in its resolution 64/119, as amended;

United Nations Dispute Tribunal: the Tribunal established by its statute as the first instance of the two-tier formal system of administration of justice at the United Nations;

* Proposed deletions are shown in strikeout and additions are underlined.

United Nations Appeals Tribunal: the Tribunal established by its statute as the second instance of the two-tier formal system of administration of justice at the United Nations and as the final instance for those entities that have accepted its jurisdiction under article 2, paragraph 10, of its statute;

Tribunal(s): the United Nations Dispute Tribunal and United Nations Appeals Tribunal, individually or collectively.

Article 2
Purpose

The present Code describes the conduct expected of legal representatives and litigants in person in proceedings before the Tribunals in the interest of the fair and proper administration of justice.

Article 3
Acknowledgement

By acting in proceedings before the Tribunals, legal representatives and litigants in person acknowledge the provisions of the present Code.

Article 4
Basic standards

1. Legal representatives and litigants in person shall maintain the highest standards of integrity ~~and professionalism~~ and shall at all times act honestly, candidly, fairly, courteously, in good faith and without regard to external pressures or extraneous considerations.

2. Legal representatives and litigants in person shall act diligently and efficiently and shall avoid unnecessary delay in the conduct of proceedings.

3. Legal representatives should encourage and facilitate dialogue between the parties with a view to settling disputes in appropriate cases.

4. Legal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards.

Article 5
Conflict of interest

1. Legal representatives shall put the interests of the party they represent before their own interests and the interests of others, and shall not represent conflicting interests in proceedings.

2. Where a conflict of interest arises, legal representatives shall promptly:

(a) Disclose the conflict to the party they represent;

(b) Take all reasonable steps to mitigate the conflict; and

(c) Withdraw themselves as legal representatives if the conflict cannot be mitigated.

3. A party may waive a conflict of interest and consent to the legal representative continuing to act in proceedings.

Article 6
Confidentiality

1. Legal representatives and litigants in person shall maintain the confidentiality of the proceedings of the Tribunals in accordance with the provisions of the statutes and rules of procedure, or as otherwise ordered by the Tribunals.

2. Legal representatives and litigants in person shall respect the confidential character of any information imparted to them in confidence in the proceedings.

3. Legal representatives and litigants in person shall not disclose, except as appropriate in the normal course of the proceedings, any document which is inviolable in accordance with applicable legal instruments on privileges and immunities of the United Nations, its specialized agencies or other United Nations entities, unless such document is already public or by authorization of the Secretary-General or the appropriate official of the relevant entity before the Tribunal.

~~3. Legal representatives shall not communicate to any Government, entity, person or any other source any information known to them by reason of their representation that they know or ought to have known has not been made public, except as appropriate to the normal course of their representation or by authorization of the Tribunals.~~

4. The obligations ~~of confidentiality~~ set forth in this article remain even after proceedings ~~the representation~~ before the Tribunals have ~~has~~ ended.

Article 7
Withdrawal of representation

1. Legal representatives may withdraw their representation of a party where they reasonably consider that good cause to do so exists.

2. In withdrawing representation, legal representatives shall take steps to the extent reasonably practicable to protect the party's interests.

3. Legal representatives shall promptly communicate such withdrawal in writing to the party they represent and the relevant Registry.

Article 8
Relations with the Tribunals

1. Legal representatives and litigants in person shall assist the Tribunals in maintaining the dignity and decorum of proceedings and avoiding disorder and disruption.

2. Legal representatives and litigants in person shall be diligent in complying with the statutes, rules of procedure, practice directions and orders, rulings or directions that may be issued by the Tribunals.

Article 9
Administration of the Code

The Tribunals may issue orders, rulings or directions in order to implement the provisions of the present Code.